

## HUMAN SERVICES BOARD

## INTRODUCTION

## DISCUSSION

The Department provided notice to petitioner on or about May 21, 2008 that she was being removed from her household's Food Stamp household due to a decision that found petitioner had committed a third intentional program violation of the Food Stamp program. In Re: R.O., (FSD-064, March 14, 2008). The petitioner requested a fair hearing of the decision to take her off the Food Stamp household on or about May 30, 2008.

The Food Stamp regulations allow the Department to seek a Food Stamp disqualification hearing when they believe that a program participant has been overpaid benefits due to fraud. Food Stamp Manual (FSM) § 273.16. The recipient is the respondent in such actions. The burden is on the Department to show by clear and convincing evidence that the individual has committed an intentional program violation (fraud) including cases in which the individual chooses not to appear at the merits hearing. FSM § 273.16(e)(6). The third time an individual is found to have committed an intentional program violation; the person will be disqualified from the Food Stamp program for life. FSM § 273.16(b)(1). Although the Food Stamp Act at 7 U.S.C.A § 2015(b)(1) calls for immediate disqualification, the federal Food Stamp regulations clarify that the disqualification begins no later than the second month after the individual receives notification of the disqualification (decision from the Food Stamp disqualification hearing). 7 C.F.R. § 273.16(b)(13).

The Department filed a Food Stamp Disqualification case claiming a third intentional program violation on or about September 11, 2006. The petitioner was represented by Vermont Legal Aid, Inc. who indicated that petitioner would

sign a Waiver and Recoupment Agreement. Vermont Legal Aid, Inc. withdrew on or about April 25, 2007. At that point, the Department attempted to negotiate with petitioner to no avail. The hearing was rescheduled for February 22, 2008 and notice was sent to the petitioner.

Petitioner did not appear at the Food Stamp Disqualification hearing. The Food Stamp regulations allow the Department to proceed with their evidence. FSM § 273.16(e)(4). On February 22, 2008, the Department presented testimony under oath from two witnesses and documentary evidence detailing that petitioner failed to disclose the receipt of child support for the period of January 2004 through January 2005 resulting in a Food Stamp overpayment of \$1,950. On or about March 14, 2008, the hearing officer found by clear and convincing evidence that petitioner committed her third intentional program violation of the Food Stamp program. In Re: R.O., Food Stamp Disqualification Hearing No. FSD-64.

Petitioner did not avail herself of her appeal rights to Superior Court and the decision in In Re: R.O., supra, is a final decision.

The Department is seeking to dismiss petitioner's request for fair hearing based upon collateral estoppel.

The Board has long recognized the doctrine of collateral estoppel in prior cases and has relied on the test articulated in Trepanier v. Styles, 155 Vt. 259, 265 (1990), to determine whether the Board is precluded by the findings of a prior tribunal. Here, the issue is whether the decision in the prior Food Stamp disqualification hearing precludes the Board from making its own findings in a case where the individual is seeking to stop her/his disqualification by contesting the basis of the disqualification. See Fair Hearing Numbers 11,444; 13,432; 13,517; 19,147; 19,692, and 20,476 for the application of collateral estoppel in Board cases.

The Trepanier ruling set out the following criteria at page 265:

- (1) preclusion is asserted against one who was a party or in privity with a party in the earlier action;
- (2) the issue was resolved by a final judgment on the merits.
- (3) the issue is the same as the one raised in the later action.
- (4) there was a full and fair opportunity to litigate the issue in the earlier action; and
- (5) applying preclusion in the action is fair.

See also Alpine Haven Property Owners Assn., Inc. v. Deptula, 175 Vt. 559 (E.O. 2003), and Mellin v. Flood Brook Union School District, 173 Vt. 202 (2001).

In this case, the petitioner was a party in the Food Stamp Disqualification hearing and the issue was resolved by a final judgment on the merits. The underlying facts and issue are essentially the same. The Department gave notice in the above Food Stamp disqualification hearing that they were seeking a decision that the petitioner had intentionally failed to disclose receipt of income resulting in an overpayment and that their case represented a third time in which petitioner had engaged in an intentional program violation.

Petitioner was initially represented. She did not appear at the merits hearing for the Food Stamp disqualification. The Department put on evidence that the hearing officer found credible. In fact, the burden of proof in Food Stamp disqualification hearings is by clear and convincing evidence. This standard of proof is stricter than the standard of proof by a preponderance of evidence that is typically used in fair hearings before the Human Services Board. There was a full and fair opportunity to litigate the facts and issue in the Food Stamp Disqualification hearing.

As a result, applying preclusion in this case is fair. Because collateral estoppel is dispositive, there is no need to reach the Department's argument regarding res judicata or a failure to state a claim for relief.

ORDER

The petitioner's request for fair hearing is dismissed as a matter of collateral estoppel.

# # #